

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PATRICIA ANN MILLER)	
Claimant)	
VS.)	
)	Docket No. 210,351
DOLLAR GENERAL STORE)	
Respondent)	
AND)	
)	
DOLGENCORP, INC. and)	
ALEXIS)	
Insurance Carriers)	

ORDER

On December 22, 1997, the application of claimant for review by the Workers Compensation Appeals Board of the Award of Administrative Law Judge John D. Clark dated July 14, 1997, came on for oral argument.

APPEARANCES

Claimant appeared by and through her attorney, Roger A. Riedmiller of Wichita, Kansas. Respondent, Dollar General Store, and its insurance carrier, Alexis, appeared by and through their attorney, David M. Druten of Kansas City, Kansas. Respondent, Dollar General Store, and its insurance carrier, Dolgencorp, Inc., appeared by and through their attorney, Joseph C. McMillan of Kansas City, Missouri. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

At oral argument claimant advised the issues dealing with claimant's average weekly wage and her entitlement to both unauthorized and future medical were no longer being

contested. As such, the only remaining issue deals with the nature and extent of claimant's injury and/or disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

The Administrative Law Judge granted claimant a 5 percent permanent partial disability to the body as a whole as a result of the injuries suffered on March 18, 1994, while in the employment of the respondent. The Administrative Law Judge denied claimant a work disability finding that claimant continued working for respondent through January 19, 1996, at which time she voluntarily terminated her employment with respondent.

While the Administrative Law Judge did not cite Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995), the Appeals Board finds the logic of Foulk applies in this matter. Claimant had returned to work with respondent and was earning a comparable wage doing an accommodated job. Claimant terminated her employment alleging that respondent was violating her restrictions. However, a review of the evidence does not substantiate claimant's allegations. The Appeals Board finds that a preponderance of the evidence supports respondent's contention that claimant was being accommodated and that her termination of employment was a voluntary act on claimant's part. Therefore, the Appeals Board finds that the Award of the Administrative Law Judge granting claimant a 5 percent functional impairment to the body as a whole is affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated July 14, 1997, should be, and is hereby, affirmed and claimant is granted an award against respondent, Dollar General Store, and its insurance carriers, Dolgencorp, Inc. and Alexis, for an injury suffered on March 18, 1994, for a 5% permanent partial disability to the body as a whole based upon a \$200 average weekly wage.

Claimant is entitled to 27.21 weeks temporary total disability compensation at the rate of \$133.34 per week totaling \$3,628.18 followed by 20.14 weeks permanent partial disability compensation at the rate of \$133.34 totaling \$2,685.47 for a 5% permanent partial general body disability making a total award of \$6,313.65. As of December 23, 1997, the entire award would be due and owing in one lump sum minus any amounts previously paid.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent and its insurance carriers pursuant to the stipulation of the parties to be paid as follows:

Ireland Court Reporting, Inc.	
Transcript of preliminary hearing	\$165.41
Transcript of motion hearing	69.30
 Barbara J. Terrell & Associates	
Deposition of Peggy M. McGuiness	163.50
Deposition of Terrance C. Tisdale, M.D.	136.50
Deposition of Brad Cragun	48.25
Deposition of Naida Eagle	43.75
Deposition of Rachel Lansden	64.00
Deposition of Theresa Snider	78.00
 Bannon & Associates	
Deposition of Patricia Miller	414.80
Deposition of Philip R. Mills, M.D.	223.98
 Barber & Associates	
Transcript of regular hearing	292.15

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Joseph C. McMillan, Kansas City, MO
David M. Druten, Kansas City, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director